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SENATE BILL 2922
By Blackburn

AN ACT to enact "The Millennial TennCare Health Coverage Reform & Renewal Act" and to amend Titles 56 and 71 of the Tennessee Code Annotated.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The General Assembly finds that current law regarding the allocation of the costs of medical care arising from accidental injuries is haphazard, inconsistent, and irrational, and that the public interest is served by specifying the various interests, obligations and responsibilities of persons related to such. Therefore, the General Assembly hereby abrogates and completely supplants the common law "made-whole" doctrine, or any other equitable or judicial notion of allocating costs of medical care when a party possesses claims against another.

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 7, Part 23, is amended by adding the following new section:

§ 56-7-___. Reimbursement of Health Care Insurer; Complete Compensation; Notice; Application to TennCare & Worker's Compensation

(a) Definitions. As used in this Code section, the term:

(1) "Benefit provider" means any insurer, health maintenance organization, health benefit plan, preferred provider organization, employee benefit plan, or other entity which provides for payment or reimbursement of health care expenses, health care services, disability payments, lost wage payments, or any other benefits under a policy of insurance or contract with an individual or group.

(2) "Injured party" means a recipient who alleges injury by acts or omissions of a third party and who has received benefits from a benefit provider. This term also includes parents or legal guardians, legal representatives and attorneys, conservators, personal representatives of the estate of such person, and any such person acting on behalf of or in the place of a recipient, including by example parties plaintiffs in actions arising under Sections 106 and/or 107 of Title 20, Chapter 5;

(3) "Claim" means any request or demand for payment or delivery of a sum of money or anything of value, whether by compromise, settlement, judgment or otherwise, against anyone other than the benefit provider, and includes by way of example, but shall in no manner be limited to:

(A) Filing of a complaint in a court of competent jurisdiction against anyone other than the benefit provider seeking compensation or other relief arising from acts or omissions alleged to have caused the injured party's damages;

(B) Making a demand for payment, in whatever form, written or oral, directly or indirectly with, to or against anyone other than the benefit provider arising from acts or omissions alleged to have caused the injured party's damage; or

(C) Initiating or engaging in discussions concerning monetary or non-monetary compensation with the third party who is alleged to have caused the injured person's damages, or any representative of the third party, including its insurers, agents, employees or otherwise and attorneys, or with respect to the injured person an excess, including uninsured motorist carrier, or umbrella insurer.

(b) Complete Compensation Rule. In the event of recovery for personal injury from a third party by an injured person for whom any benefit provider has paid medical expenses, the injured person is required to reimburse the benefit provider benefits it has paid on account of the injury, up to the amount of benefits so paid, without regard to allocations or characterization of all or part of a recovery, if any only if:

(1) The amount of the recovery together with the amount paid or payable by the benefit provider equals or exceeds the sum of all economic and non-economic losses incurred as a result of the injury; and

(2) The amount of the reimbursement claim is reduced by the pro rata amount of the attorney's fees and expenses of litigation incurred by the injured party in bringing the claim, unless the benefit provider retained separate counsel, otherwise asserted its right of reimbursement separately and independently of the injured party and intervened and meaningfully participated in any related litigation.

(c) Settled Cases; Declaratory Judgment. In the settlement of any claim for personal injury, under circumstances where it is claimed that the amount of the recovery is less than the sum of all economic and non-economic losses incurred as a result of the injury, a benefit provider which has paid benefits to or on behalf of the injured person may seek a declaratory judgment pursuant to Title 29, Chapter 14, as to what extent it may share in said settlement:

(1) If the court determines the recovery together with the amount paid or payable by the benefit provider, or if more than one, then all, fails to equal or exceed the sum of all economic and non-economic losses incurred because of the injury, the benefit provider shall have no right of reimbursement; and

(2) The prevailing party in any such action shall be awarded its costs, including its reasonable attorney's fees and expenses.

(d) Abrogation of Subrogation. Subrogation for medical expenses and disability payments by a benefit provider against a person at fault for injury is prohibited and no dependent or liability insurance carrier shall include any insurer seeking reimbursement as a co-payee on any check or draft in payment of a settlement or judgment.

(e) Benefits May Not Be Limited. No benefit provider shall be entitled to reduce the amount for which it is liable under an insured party's coverage for liability, uninsured motorist, disability, medical payments, or other benefits as a setoff against any claim for reimbursement under subsection (b) of this Code section, nor shall any benefit provider be entitled to withhold or set off insurance benefits as a means of enforcing a claim for reimbursement. Nothing in this subsection shall be deemed to prohibit the coordination of benefits between or among benefit providers nor shall this subsection prohibit the exclusion of coverage for health care services paid or payable by or through liability, uninsured motorist, disability, medical payments or other no-fault insurance.

(f) Notice of Third Party Claim. When a recovery for personal injury is sought from a third party by or on behalf of a person for whom any benefit provider has paid medical expenses or disability benefits, the person asserting the claim for recovery against the third party shall provide notice of the existence of the claim, by certified mail, return receipt requested, to any benefit provider which the person asserting the claim has reason to believe has paid benefits relating to the injury for which the injured party seeks a recovery. This notice shall be provided within ten (10) days of the injured party,

either directly or indirectly, making a claim against the third party, or its insurer, unless a longer notice is agreed to by the designated recipient of the notice. Said notice must include the following information:

(1) Identify of:

1. Injured party by specifying his/her name, unique identifying number assigned to the injured party by the benefit provider, his/her current mailing address, home and work telephone numbers;

2. Other party alleged to be liable to the injured party by specifying his/her or its name, current mailing address, work and telephone number;

3. Any insurer(s) or surety(s) of:

i. the other party, including the name, address and telephone number of the injured party's principal contact with said insurer or surety, and the unique identifying number or indicator assigned by said insurer or surety to the injured party's claim;

ii. Any insurer(s) or surety(s) of the injured party, other than the benefit provider, including the name, address and telephone number of the injured party's principal contact with said insurer or surety, and the unique identifying number or indicator assigned by said insurer or surety to the injured party's claim;

(2) Type of event that caused the injured party to seek medical care;

(3) City and state where the event occurred; and

(4) Date of the event's occurrence, or if the event was of a duration or of a continuing nature, the beginning and ending date, if any.

(g) Notice of Reimbursement. If the notice required in subsection (g) is provided, reliance on the rule of (b) is proper to the extent sums received exceed the amount claimed as reimbursement by the benefit provider, whose reimbursement claim

must be evidenced by delivery of notice prior to the consummation of a settlement or commencement of trial, by certified mail return receipt requested, including a specific itemization of payments for, names of payees, dates of service or payment or both, and the amounts thereof. Nothing contained in this subsection shall prohibit the supplementation of a claim prior to the consummation of a settlement or judgment, except that any supplemental claims shall be subject to the notice requirements contained in this subsection.

(h) Failure of Notice. A benefit provider or injured party, or both, who fail to provide the notices, in form and substance, required by this section shall be deemed to have waived any rights and defenses set forth in this section.

(i) Invalidity of Conflicting Provisions. No benefit provider contracts or policies containing or incorporating provisions in conflict with this code section may be issued in this state, and no policy or contract provisions for subrogation or reimbursement in conflict with this code section may be enforced by a benefit provider with regard to claims or injuries.

(j) Invalidity of Confidentiality Provisions. Any settlement which is subject to this code section containing a confidentiality provision as to any terms of the settlement necessary to a proceeding hereunder shall be unenforceable as to the disclosure of such required information.

(k) Inapplicability to TennCare or Workers' Compensation. This code section shall not apply to the rights of the state of Tennessee, its agencies or assigns or any managed care or health maintenance organization business line that participates in the TennCare program, or for any claim for subrogation or reimbursement brought pursuant to recovery rights of chapters 1 and 5 to Title 71, nor shall this code section apply to the rights of employers in recovering sums paid as workers' compensation benefits pursuant to Title 50.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.